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REMARKS

Claims 8-18 are currently pending in the subject application.

In the Office Action, the Examiner rejected claims 16-17 under 35 U.S.C. §112, second paragraph, as being indefinite because of the recitation of the term "flexible" in claim 16. Applicant submits that the recitation of the term "flexible" does not render claims 16 and 17 indefinite. The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). As set forth in MPEP §2173.05(b), "Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification." Applicant submits that one skilled in the art would understand what is claimed, especially in light of Fig. 7, which shows the multilayer plate 50 of Fig. 5 being flexed to conform to the outer surface of a cylindrical conductor. Applicant also notes that since 1976, the U.S. Patent Office has issued more than 179,000 patents having the term "flexible" recited in the claims. In the last three years alone, the U.S. Patent Office has issued more than 19,841 patents having the term "flexible" recited in the claims. (Printouts of the searches showing these numbers are attached.) Based on these large numbers, it is clear that the U.S. Patent Office itself does not consider the term "flexible" to be an indefinite term. For at least the foregoing reasons, Applicant submits that claims 16 and 17 are not indefinite and fully meet the requirements of 35 U.S.C. §112, second paragraph.

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In the Office action, the Examiner has rejected claims 8, 11 and 18 under 35 U.S.C. §103(a) as being unpatentable over Japanese patent application JP63021568 to Yoshio et al. in view of French patent application FR2689655 to Oppenlander and U.S. patent application 2002/0079519 to Majumdar et al. Applicant traverses this rejection for at least the reasons set forth below. The Examiner has rejected claims 9-10 under 35 U.S.C. § 103(a) as being unpatentable over the Yoshio et al. application, the Oppenlander application and the Majumdar application and further in view of U.S. Patent Application No. 2003/0030606 to Hector et al. The Examiner has rejected claims 12 and 14-15 under 35 U.S.C. § 103(a) as being unpatentable over the Yoshio et al. application, the Oppenlander application and the Majumdar application and further in view of U.S. Patent No. 6,248,263 to Tonar et al.

The Yoshio et al. application discloses a power display comprising a pair of transparent electrodes 15, 15'. The Examiner finds an intermediate layer having electrooptical properties as being disposed between the electrodes 15, 15'. The Examiner acknowledges that the Yoshio et al. application fails to show a first layer having smaller conductive portions that are separated from each other and are not in contact with each other. The Examiner, however, cites the Oppenlander application as teaching this feature. The Examiner also acknowledges that the Yoshio et al. application fails to show first and second diodes connecting conducting first and second layers, the first and second diodes being oriented in opposite directions with respect to the first and second layers. The Examiner, however, cites the Majumdar et al. application as teaching this feature. Applicant submits that the Examiner has failed

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to establish a *prima facie case of obviousness* because the Examiner has failed to provide any motivation to combine the references as the Examiner has done. Moreover, the Oppenlander application fails to show what is attributed to it.

The Oppenlander application discloses an electrochromic-electrolyte cell for coating large surfaces, such as vehicle windows. The cell includes an electrode F1, which comprises a grid formed of conductive lines or wires. In this regard, please see page 4, lines 20-24 of the Oppenlander application which describe the electrode F1. In line 23, the electrode F1 is described as utilizing "des lignes conductrices", which means "conductive lines". Thus, contrary to the Examiner's interpretation, the Oppenlander application does not disclose smaller conductive portions that are separated from each other and not in contact with each other.

In addition to the Oppenlander application failing to show what is attributed to it, the Examiner also fails to provide a proper motivation to combine the references. The motivation provided by the Examiner is that "It would have been obvious to one of ordinary skill in the art at the time the invention was made to use smaller conductive portions as taught by Thomson, with the voltage display of Takaoka, since as shown by Thomson smaller conductive portions are commonly used in order to construct an electrical device" (emphasis added). This motivation provided by the Examiner is really no motivation at all. In essence, the Examiner is saying that the mere fact that an element (e.g. smaller conductive portions) exists in the prior art is sufficient motivation to combine that element with other elements in the prior art (e.g. the elements of the

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Yoshio et al. application). This is contrary to established patent law. As is best summarized in the case *In re Rouffet*, 149 F.3d 1350 at 1357 (Fed. Circuit 1998):

As this court has stated, "virtually all [inventions] are combinations of old elements"....Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability".

The Examiner provides a similar type of motivation for combining the disclosure of the Majumdar application with the disclosure of the Yoshio et al. application and the Oppenlander application. The motivation provided by the Examiner is that "It would have been obvious to one of ordinary skill in the art at the time the invention was made to used diodes as taught by Majumdar, with the voltage display of Takaoka, since as shown by Majumdar, diodes are commonly used in order to construct an electrical device." Once again, this is really no motivation at all and is akin to saying that the mere fact that an element (e.g. a diode) exists in the prior art is sufficient motivation to combine that element with other elements in the prior art (e.g. the elements of the Yoshio et al. application). As set forth above, this is contrary to established patent law.

Based on the foregoing, it is clear that the Examiner has failed to establish a

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prima facie case of obviousness and that claims 8, 11 and 18 are patentable over the Yoshio et al. application, the Oppenlander application and the Majumdar application. Applicant submits that the remaining claims (9, 10, 12-17) are also patentable because the rejection of these claims rely on the rejection of the base claim (independent claim 8) based on the Yoshio et al. application, the Oppenlander application and the Majumdar application, which is deficient for the reasons set forth above.

Based on the foregoing, Applicant submits that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 050877.

Respectfully submitted,

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By:



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Patent Database Search Results: aclm/flexible in US Patent Collection

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ACLM/flexible: 179044 patents.

Hits 1 through 50 out of 179044

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PAT. NO. Title

- 1 RE39,392 T Locking bracket and cupholder for seat frame
- 2 RE39,391 T Composite bowl
- 3 D531,914 T Side gusseted flexible beverage pouch with fitment
- 4 7,137,131 T Optical disc drive
- 5 7,137,100 T Automatic software production system
- 6 7,136,871 T Methods and systems for selectively displaying advertisements
- 7 7,136,814 T Syntax-driven, operator assisted voice recognition system and methods
- 8 7,136,687 T Electrical device for adjusting the angle between a top module and a bottom module
- 9 7,136,685 T Multifunctional portable electronic device
- 10 7,136,620 T Method and apparatus for providing wideband services using medium and low earth orbit satellites
- 11 7,136,605 T Image forming apparatus, method of evaluating noise, and methods of manufacturing and modifying image forming apparatus
- 12 7,136,556 T Signal transmitting cable
- 13 7,136,555 T Distribution cable having articulated optical connection nodes
- 14 7,136,454 T Method for operating an x-ray analysis apparatus with two-dimensional array detector and x-ray analysis apparatus for carrying out the method
- 15 7,136,345 T Optical pickup device and optical disk device
- 16 7,136,275 T Polymeric dielectric material for high-energy density capacitors
- 17 7,136,273 T Hybrid spring contact system for EMI filtered hermetic seals for active implantable medical devices
- 18 7,136,263 T Thin-film magnetic head, thin-film magnetic head assembly, storage device, and method of manufacturing thin-film magnetic head
- 19 7,136,259 T Frame structure and flexible disk drive having the same

Patent Database Search Results: aclm/flexible and ISD/11/1/2003-&gt;11/1/2006 in US Paten... Page 1 of 2

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 (ACLM/flexible AND ISD/20031101->20061101): 19841 patents.  
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[ ]

Refine Search: aclm/flexible and ISD/11/1/2003->11/1/2006

PAT. NO. Title

- 1 RE39,371 T Lap dance liner
- 2 D531,339 T Flexible lighting apparatus
- 3 7,131,125 T Method and system for sharing a computer resource between instruction threads of a multi-threaded process
- 4 7,131,050 T Optimized read performance method using metadata to protect against drive anomaly errors in a storage array
- 5 7,130,697 T Apparatus and method for the treatment of benign prostatic hyperplasia
- 6 7,130,693 T Method for increasing the resolution and decreasing the power dissipation in eye prosthetics
- 7 7,130,591 T Cell phone
- 8 7,130,572 T Image heating apparatus using a flexible sleeve
- 9 7,130,511 T Flexible active signal cable
- 10 7,130,492 T Optical position sensing apparatus
- 11 7,130,421 T Single piece versatile phone stand
- 12 7,130,194 T Multi-board optical transceiver
- 13 7,130,159 T Magnetic disk apparatus
- 14 7,130,155 T Head suspension assembly and magnetic disk apparatus comprising the head suspension assembly
- 15 7,130,020 T Roll printer with decomposed raster scan and X-Y distortion correction
- 16 7,130,004 T Display arrangement
- 17 7,129,849 T Analog instrument gauge display
- 18 7,129,841 T Adjustable anti-theft tag
- 19 7,129,828 T Encapsulated surface acoustic wave sensor
- 20 7,129,731 T Heat pipe with chilled liquid condenser system for burn-in testing